

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 23, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP1605-CR**

**Cir. Ct. No. 2011CT206**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**TAMARA JO POTTER,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment of the circuit court for Douglas County:  
GEORGE L. GLONEK, Judge. *Affirmed.*

¶1 CANE, J.<sup>1</sup> Tamara Potter appeals a judgment of conviction for operating while intoxicated, second offense. Potter argues the circuit court erred

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

by denying her suppression motion because the officer lacked reasonable suspicion to stop her vehicle. Because the officer had reasonable suspicion to stop Potter's vehicle, the judgment is affirmed.

## **BACKGROUND**

¶2 On September 18, 2011, at approximately 12:52 a.m., the Douglas County Communications Center (Dispatch) received a telephone call from the Minnesota State Highway Patrol (MHP). MHP reported it had received a driving complaint about a "swerving" white Chevy Impala with license plate number 769PAJ. The reporting caller had "turned off" but had advised MHP that the vehicle was traveling toward Wisconsin on the Blatnik Bridge. The Blatnik Bridge is a one- to two-mile bridge that connects Wisconsin and Minnesota.

¶3 In response, Dispatch broadcasted two "attempt to locate" requests that described the vehicle, the reported driving, and the direction of travel. Officer Eric Olson testified he responded to the attempt to locate requests, traveling toward Blatnik Bridge. Within one minute, Olson observed a white Chevy Impala with the reported license plate number traveling away from the bridge. Olson turned his squad car around and began following the vehicle.

¶4 Olson followed the suspect vehicle for two or three blocks. During that time, Olson observed the vehicle "drifting" within its lane of travel. He explained that the vehicle would drive "very close" to the white fog line, drift to the center of its lane, and then drift back toward the fog line. Olson stopped the vehicle. He eventually arrested the vehicle's driver, Potter, for operating while intoxicated.

¶5 The circuit court determined Olson had reasonable suspicion to stop Potter's vehicle based on the "swerving" reported by the caller and Olson's subsequent observations. It therefore denied Potter's suppression motion. Potter pled no contest to operating while intoxicated, and the court found her guilty. She appeals.

## DISCUSSION

¶6 An officer may conduct a traffic stop if he or she has reasonable suspicion to believe a crime or traffic violation has been or will be committed. *State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569. Whether there is reasonable suspicion is a question of constitutional fact. *Id.*, ¶10. We uphold the circuit court's factual findings unless they are clearly erroneous; however, we independently apply those facts to constitutional principles. *Id.*

¶7 Reasonable suspicion exists when, under the totality of the circumstances, "the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime." *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634 (citation omitted). "Such a stop must be based on more than an officer's 'inchoate and unparticularized suspicion or hunch.'" *Id.*, ¶10 (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). Instead, the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop." *Id.* (quoting *Terry*, 392 U.S. at 21).

¶8 On appeal, Potter argues that Olson unlawfully stopped her vehicle. She asserts that "neither the unknown person's call to the Minnesota State Highway Patrol, nor Officer Olson's subsequent observations of Potter's driving,

nor the combination of the two” amount to reasonable suspicion. In support of her assertions, Potter relies on *State v. Rutzinski*, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516, and *Post*.

¶9 In *Rutzinski*, our supreme court determined that an officer properly stopped a vehicle based solely on a caller’s tip and without any independent observations of the reported driving because: (1) the tip exposed the caller to possible identification and therefore possible arrest if the tip proved to be false; (2) the tip reported contemporaneous observations of the driving and vehicle location; and (3) the tip suggested the driver was intoxicated. *Rutzinski*, 241 Wis. 2d 729, ¶¶31, 38. Potter argues that, in this case, the caller’s tip cannot serve as a basis for reasonable suspicion because there is no indication that the caller exposed him or herself to possible identification and the caller did not remain on the phone with dispatch to provide continued, contemporaneous observations.

¶10 Initially, Potter correctly observes that before law enforcement may rely on a tip to justify an investigative stop, the tip must exhibit reasonable indicia of reliability. *Id.*, ¶18. Reliability is assessed through a weighing of the informant’s veracity and the informant’s basis of knowledge. *Id.* However, contrary to Potter’s suggestion, there is no requirement that the informant must identify him or herself to police or remain in continued, contemporaneous contact with law enforcement. Indeed, as the *Rutzinski* court explained, officers may rely on tips from anonymous informants, which through independent police investigation, indicate the informants possess “inside information.” *Id.*, ¶22.

¶11 Further, Potter’s comparison of her situation to the one in *Rutzinski* is misplaced. *Rutzinski* focused on whether the officer was justified in relying on a tip from a motorist without making any independent or corroborating

observations. However, in this case, Olson waited to stop Potter's vehicle until he independently observed the reported erratic driving.

¶12 In fact, this situation is more analogous to the one in *Alabama v. White*, 496 U.S. 325 (1990). There, an anonymous caller reported that the defendant would leave a specific address at a specific time and get into a specific car and drive to a specific motel. *Id.* at 327. The caller explained that, at that time, the defendant would be in possession of a brown attaché case that contained drugs. *Id.* The officers proceeded to the address and observed an individual leave the address at the stated time, enter the described vehicle, and begin to travel toward the motel named in the tip. *Id.* Just before reaching the motel, the officers stopped the vehicle. *Id.* The Court held that, although the initial anonymous tip did not, in itself, justify an investigative stop, the corroboration of the informant's tip—particularly the predictions of future behavior, provided the tip with sufficient indicia of reliability to justify the stop. *Id.* at 332.

¶13 In this case, Olson corroborated the details of the caller's report before making the stop. He confirmed the vehicle's description, direction of travel, and, most importantly, the allegation of erratic driving. He waited to stop Potter's vehicle until he observed it "drifting" within its lane, which demonstrates the driver's sporadic control of the vehicle. We agree with the circuit court that Olson sufficiently corroborated the caller's tip after observing "the same general type of unsafe driving behavior that caused the caller to report the vehicle." Olson's corroboration provided the tip with sufficient indicia of reliability. *See id.* at 332.

¶14 Potter also relies on *Post* to argue that Olson's observations of Potter's vehicle "drifting" back and forth within its lane cannot serve as a basis for

reasonably suspecting Potter was operating while intoxicated. She asserts that, because the *Post* court acknowledged *Post* was a “close case,” we must conclude that Olson’s observations did not amount to reasonable suspicion.

¶15 In *Post*, 301 Wis. 2d 1, ¶38, our supreme court determined that “weaving within a single traffic lane does not alone give rise to the reasonable suspicion necessary to conduct an investigative stop of a vehicle.” However, the *Post* court determined that, based on the totality of the circumstances, the facts and reasonable inferences in that case accumulated and built on each other such that the officer had reasonable suspicion to stop the vehicle. *Id.*, ¶¶36-37. Specifically, the court observed that, although the vehicle did not cross any traffic lines, the vehicle weaved laterally between the travel lane and unmarked parking lane, made a discernible S-type pattern for two blocks, and was originally found “canted” in the unmarked parking lane. *Id.*, ¶36. The court also noted that the officer’s observations were made at 9:30 p.m., which lent some “credence” to a suspicion that the driver was intoxicated. *Id.*

¶16 Here, under the totality of the circumstances, Olson had reasonable suspicion to stop Potter’s vehicle. First, Olson’s stop was not based solely on his observations of the vehicle “drifting” back and forth within its lane. Olson also stopped the vehicle based on the corroborated tip from the caller who reported that Potter’s vehicle was “swerving.” Moreover, because Olson observed driving similar to the driving reported in Minnesota, Olson could reasonably infer that Potter had been driving in this manner for at least the length of the mile-long Blatnik Bridge. Finally, Olson made his observations of Potter’s driving at approximately 12:52 a.m., almost one hour before “bar time.” *See id.* Therefore, the accumulation of these facts and reasonable inferences amounted to reasonable

suspicion necessary for the stop. *See State v. Waldner*, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996).

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

